

**RULE 3401**  
**PRE-TRIAL RULES**

**1) APPLICATION**

- a) Unless the judge to whom a case is assigned for all purposes orders otherwise, this rule applies to all civil trials, except for (i) non-jury unlawful detainer trials and (ii) non-jury trials estimated to take no more than five hours.
- b) In non-jury trials estimated to take five hours or less, compliance is encouraged but not mandated.
- c) References to “counsel” also include self-represented parties.

**2) EXCHANGE OF DOCUMENTS**

Not later than 14 days before the date set for trial, or by such other time agreed upon by counsel, counsel for all parties shall exchange each of the following:

- a) A list of all witnesses the party intends to call to testify at trial, including the witness’s name and a single-sentence description of the anticipated subjects on which the witness is expected to testify. In a jury trial, the list shall also identify (i) the community in which each non-expert witness resides and (ii) the occupation and area of the principal office of each expert witness.
- b) A list of all exhibits that the party intends to introduce at trial, except those intended to be used solely to impeach a witness. The list shall include the exhibit number, a title or other brief description, and the number of pages in the exhibit. Except for exhibits to be used solely for impeachment of a witness, if any exhibit has not previously been exchanged in discovery, a copy of that exhibit shall also be exchanged.
- c) A list of facts or issues of law that the party believes are not controverted and to which the party is willing to agree.
- d) If a plaintiff, a description of each claim in support of which the party intends to offer evidence at trial and of the relief being sought as to each claim, including the nature of each element of damages for which recovery is sought and the amount of each element of economic damages. If a defendant, a description of each affirmative defense in support of which the party intends to offer evidence at trial.
- e) Any motions in limine that the party intends to bring.
- f) In a jury trial, a proposed statement of the case suitable for reading to the jury venire (unless the parties have already agreed to begin voir dire with brief opening statements in accordance with Code of Civil Procedure section 222.5). The statement of the case should be neutral and non-argumentative. It should include the basic uncontested facts and, to the extent necessary, the contentions of the parties. It should rarely exceed four or five simple sentences. It should use plain English, without legal or technical jargon.
- g) In a jury trial, a list of form jury instructions and the text of special jury instructions that the party proposes to use.
- h) In a jury trial, a proposed verdict form.

### 3) ISSUES CONFERENCE

Not less than seven days before the date set for trial, or by such other time agreed upon by counsel, lead trial counsel for all parties shall meet (either in person or by telephone) and conduct an Issues Conference. Counsel for the plaintiff shall be responsible for arranging the conference at a mutually agreeable time and place. During the conference, counsel shall:

- a) Discuss each witness intended to be called by the respective parties, to determine whether that witness's testimony can be rendered unnecessary by an agreement either (i) to the facts or (ii) to how the witness would testify.
- b) Discuss each exhibit intended to be introduced by the respective parties, to determine (i) whether that exhibit's introduction can be rendered unnecessary by an agreement to the facts, and if not, (ii) whether the parties can agree upon either the admissibility or the authenticity of the exhibit.
- c) Discuss each potential uncontroverted fact or issue of law to determine whether the parties can agree that it is true.
- d) Discuss each proposed motion in limine to determine whether the relief sought is opposed, and if so, whether the parties can agree to a resolution.
- e) Discuss whether counsel will exchange electronic copies of any and all briefing and evidentiary exhibits in a standardized format prior to trial.
- f) In a jury trial, discuss whether counsel will provide brief opening statements to the venire panel as permitted by Code of Civil Procedure section 222.5, and if not, whether the parties can agree upon a joint proposal for the statement of the case.
- g) In a jury trial, discuss the proposed jury instructions to determine whether the parties can agree on how the jury should be instructed.
- h) In a jury trial, discuss the proposed verdict form to determine whether the parties can agree upon a joint proposal.

### 4) JOINT PRETRIAL STATEMENT AND ACCOMPANYING DOCUMENTS

- a) Following the Issues Conference, counsel shall prepare a Joint Pretrial Statement and the additional documents specified below. Unless the parties agree otherwise, the documents shall be prepared by counsel for the plaintiff. All shall be signed by lead trial counsel for each party.
- b) The Joint Pretrial Statement shall be contained in a single document with a single caption and a single set of signatures. The statement shall include the following:
  - i) A joint statement of parties and counsel, listing the full name of each party still in the action and the name of the attorney, if any, who will represent that party at trial.
  - ii) A stipulation reciting the precise facts or legal issues to which the parties agree. If the parties have resolved any potential motions in limine, the stipulation should recite those resolutions.
  - iii) A joint statement of claims and defenses in the manner described in subdivision 2. Except for good cause, no party will be allowed to introduce evidence to support any claim, any element of damage, or any affirmative defense that is not listed on that statement.

iv) In a jury trial, a joint statement of the case in the manner described in subdivision 2, unless counsel have agreed to begin voir dire with brief opening statements as permitted by Code of Civil Procedure section 222.5. If counsel are unable to agree on a joint proposal for the statement of the case, then counsel shall include a joint statement of the case to the limited extent to which all counsel can agree, together with the separate proposals as to those aspects on which counsel cannot agree.

c) In addition to the Joint Pretrial Statement, counsel shall prepare: i) A joint witness list in the manner described in subdivision 2. Except for good cause, no party will be allowed to call any witness who is not on that list for any purpose other than impeachment of a witness.

ii) A joint exhibit list in the manner described in subdivision 2. The exhibit list shall indicate whether the parties have stipulated to the admission or the authenticity of the exhibits. Except for good cause, no party will be allowed to introduce any exhibit that is not on that list for any purpose other than impeachment of a witness.

iii) In a jury trial, the form jury instructions and any special jury instructions on which all parties agree. If the parties do not all agree as to all instructions requested, counsel shall also prepare the form jury instructions and any special jury instructions on which all parties have not agreed. Each of the latter instructions shall identify the party or parties who are proposing or have agreed to that instruction.

iv) In a jury trial, an agreed-upon verdict form. If counsel are unable to agree on a joint proposal for the verdict form, then counsel shall include a joint proposed verdict form to the limited extent to which all counsel can agree, together with their separate proposals as to those aspects on which counsel cannot agree.

d) If counsel for any party fails to participate in the Issues Conference, or otherwise fails to cooperate in the preparation of the documents specified above, then counsel for the remaining party or parties shall prepare and sign proposed versions of those documents. In that event, the Proposed Joint Pretrial Statement shall include a declaration describing the attempts made by the remaining party or parties to confer with or obtain the cooperation of the non-complying party.

## 5) TRIAL BRIEFS

Trial briefs concerning the legal issues presented by the trial are required in non-jury trials and encouraged in jury trials. However, submission of a trial brief does not excuse compliance with any provision of this rule.

## 6) MOTIONS IN LIMINE

a) Motions in limine shall be brought only if the parties disagree as to the subject of the motion. If there is no disagreement, then the agreed-upon issue shall be included in the parties' stipulation of facts and legal issues.

- b) Every motion in limine submitted to the Court:
- i) Shall be in writing.
  - ii) Shall be numbered sequentially according to the party or side bringing it (e.g., Plaintiff's No. 1, Plaintiff's No. 2, Defendant Smith's No. 1, Defendant's #2, etc.).
  - iii) Shall be tailored to the specific issues of the case and to the specific evidence expected to be introduced at trial. They shall not seek declarations of existing law of general application, e.g., that the opposing party may not introduce inadmissible hearsay.
  - iv) Shall be supported by a memorandum of points and authorities.
- c) Any motion or opposition to a motion that depends upon the existence of particular facts shall be supported by competent, admissible evidence establishing those facts. Any declaration submitted must demonstrate the declarant's personal knowledge. Any documentary evidence must be authenticated.
- d) Any motion seeking to preclude the introduction of any evidence or to otherwise prevent the mention or display of inadmissible and prejudicial matter in the presence of the jury:
- i.) Shall clearly describe the specific evidence or matter alleged to be inadmissible and prejudicial.
  - ii.) Shall be supported by a declaration that both: (1) Demonstrates that the subject of the motion has been discussed with opposing counsel, and that opposing counsel has either (A) indicated that such matter will be mentioned or displayed in the presence of the jury or (B) refused to stipulate that such matter will not be mentioned or displayed in the presence of the jury unless and until it is admitted into evidence; and (2) Explains the specific prejudice that will be suffered by the moving party if the motion is not granted.
- e) Except in cases of issue preclusion based on responses to requests for admissions, previously ordered sanctions for abuse of the discovery process, or other extraordinary circumstances, the Court will not entertain a motion seeking to exclude evidence merely because it differs from a party's discovery responses.
- f) Any party submitting any motions in limine shall submit a single proposed order encompassing all motions made by that party. As to each motion, the proposed order shall state the precise relief sought so that the ruling can be understood from the language of the order without the need to refer to the text of the motion. If the motion seeks to exclude certain evidence, the proposed order shall describe the precise evidence being excluded, shall direct counsel not to refer to the excluded evidence during trial, and shall direct counsel to advise their parties and witnesses not to refer to it.

## 7) EXHIBITS

- a) Exhibits must be numbered in advance. Each exhibit shall bear a separate exhibit number (i.e., avoid marking exhibits “3a, 3b, 3c...”).
- b) Unless there are less than 10 exhibits, all documentary exhibits and photographs (8 ½” x 12” or smaller) should be placed in a loose-leaf notebook with numbered dividers corresponding to the exhibit number.
- c) For ease of reference during testimony, each page of each exhibit shall bear a unique and consecutive page number.
- d) Counsel are encouraged to exchange their exhibits electronically in a standardized format.

## 8) JURY INSTRUCTIONS

- a) The proposed jury instructions shall be fully edited and shall be in the form required by California Rule of Court, rule 2.1055, including the index prescribed by rule 2.1055(b).
- b) If there are CACI instructions applicable to the legal issues presented, the Court will use those CACI instructions unless the party proposing a different instruction demonstrates that the instruction proposed would more accurately state the law and be more clearly understood by the jurors.
- c) The instructions should be divided into two sets: those to which all parties agree, and those to which some party has an objection.

## 9) FILING TRIAL DOCUMENTS

- a) No trial document shall be filed prior to the trial date. Instead, all trial documents shall be filed on the first day of trial in the department to which the case has been assigned for trial.
- b) In addition to the copies provided to opposing counsel and any copies to be conformed, counsel shall provide the original and one copy of each of the following trial documents to the Court:
  - i) Joint Pretrial Statement, or Proposed Joint Pretrial Statement.
  - ii) Joint Witness List, or Proposed Joint Witness List.
  - iii) Joint Exhibit List, or Proposed Joint Exhibit List.
  - iv) Exhibits.
  - v) Requests for judicial notice (if any).
  - vi) Motions in limine (if any), and proposed order.
  - vii) Oppositions to motions in limine (if any).
  - viii) Trial brief (if any).
  - ix) Stipulation of facts or issues of law (if any).
- x) In a jury trial, jury instructions and verdict form.
- c) Any party who intends to read from a deposition transcript during trial shall lodge the original transcript with the court on the first day of trial.

#### 10) EFFECT OF A CONTINUANCE OF TRIAL

In the event that the trial is continued after the Issues Conference has been conducted and the trial documents have been prepared, counsel need not conduct a further Issues Conference or revise any of the trial documents unless there has been a material change. In the event that counsel for any party believes that any trial document needs to be changed or supplemented, that counsel shall meet and confer with all other counsel.

#### 11) ENFORCING COMPLIANCE

Parties or their counsel who fail to comply with any portion of this rule without good cause are subject to sanctions, including but not limited to orders striking all or part of that party's pleading, dismissing all or part of that party's action, entering a judgment by default against that party, postponing the trial, or imposing monetary, evidentiary, or issue sanctions. Code Civ. Proc., section 572.5.

(Adopted 5-13-13, effective 7-1-13; amended 11-8-14, effective 1-1-15; amended administratively to correct typographical error 3-25-15, effective 3-25-15; amended 4-29-16, effective 7-1-16)